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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Billed Party Preference for  
InterLATA 0+ Calls

CC Docket No. 92-77

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REPLY COMMENTS OF  
THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

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## SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 interexchange, international, local and wireless resale carriers and their underlying product and service suppliers, offers the following reply comments in support of Commission's proposal to adopt of benchmarks for consumer rates and associated charges of Operator Service Providers ("OSPs") and the imposition of a notification obligation on OSPs providing service at rates exceeding those benchmarks:

- TRA continues to support adoption of federal benchmarks for OSP rates and associated charges based upon and corresponding to consumer expectations. The OSP rates of AT&T, Sprint and MCI represent a reasonable starting point for determining "the reasonable expectations of consumers"; however, TRA urges the Commission to consider whether utilizing the highest rates (plus a reasonable margin percentage), rather than a weighted average, might more fully protect against disparate effects of the benchmarks to smaller OSPs less well-suited to minimize costs of providing service.
- Like numerous industry commenters, TRA believes the benefit to consumers will be increased by limiting announcements to carrier's rates which may exceed established benchmarks for OSP calls. Such a policy would minimize both call delays and the risk of consumer desensitization to more generally applicable rate announcements not designed to specifically alert consumers to higher than anticipated OSP rates.
- TRA strongly supports adoption of its proposed notification format, which would inform consumers "this call may cost you up to \_\_\_\_% more than federally-established operator services rates". Such an announcement would provide an effective comparison for consumers while avoiding the technical and economic difficulties associated with implementing real-time rate announcements.
- TRA continues to urge, as have several other carriers, that the Commission incorporate into the benchmark process a mechanism for the periodic revision of benchmarks to reflect rate adjustments by the so-called "benchmark OSPs".

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THE TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. §1.415(c), hereby submits its Reply Comments in response to the Second Further Notice of Proposed Rulemaking, FCC 96-253, released by the Commission in the above-captioned docket on June 6, 1996 (the "Notice").

**I.**

**INTRODUCTION**

In its Comments, TRA, like many industry commenters, supported the adoption of federal benchmarks for OSP rates and associated charges based upon and corresponding to consumer expectations for OSP calls. Inasmuch as the combined OSP offerings of AT&T, MCI and Sprint dwarf the OSP service offerings of all other OSPs, TRA continues to support the OSP rates of those carriers as a reasonable -- and appropriate -- starting point for determining "benchmarks for OSPs' consumer rates and associated charges that reflect what consumers expect

to pay".<sup>1</sup> The Commission itself noted, however, that unique costs confronting certain OSP would necessarily affect the rates at which those services may be offered to consumers and, accordingly, no single OSP rate would readily accommodate the pricing flexibility required by OSPs.<sup>2</sup> TRA wholeheartedly agrees with the Commission's conclusion and continues to urge careful consideration of the distinctive economic challenges confronting smaller carriers, in particular, when setting appropriate benchmark levels. TRA remains concerned that a 15% margin above a weighted average of the "Big 3" OSP rates may provide less than adequate protection for these smaller carriers, and suggests that the contention of certain parties, that benchmarks be set at a particular percentage above the highest of the "Big 3" OSP rates, warrants serious consideration.

TRA further supported Commission adoption of a consumer notification requirement, to be imposed upon carriers whose rates exceed established benchmarks, obligating such carriers to announce at the beginning of the call the largest percentage by which that call might exceed those benchmarks. The logistical difficulties and economic constraints associated with implementation of a "real-time" rate announcement have been dramatically illustrated by commenters in the proceeding. TRA's proposed announcement requirement, by contrast, may be immediately implemented while incurring little or no deployment costs. The ultimate benefit of adopting TRA's proposal will flow directly to consumers, who will be provided information upon which a cost comparison may be made -- information which a solitary rate quote would not

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<sup>1</sup> Notice, FCC 96-253 at ¶ 3.

<sup>2</sup> See Notice at ¶ 28.

convey. Further, consumers would receive this information quickly, that is, without noticeable call processing delay, and without incurring passed-through implementation costs. By limiting the notification obligation to only such OSP calls which may exceed the benchmarks, the Commission could minimize (or perhaps completely eradicate) the risk of consumer desensitization to rate announcements, ensuring that consumer notifications serve, and over time will continue to serve, their intended purpose.

Finally, TRA's comments supported the Commission's efforts to structure a benchmark system which would obviate, to a great extent, the necessity of repeated rate adjustments by OSPs during the 12-month period those benchmarks are in effect. The annual effectiveness period proposed by the Commission, however, prompted TRA to seek the establishment of a procedure for periodic revision of those benchmarks as necessary to adjust for any rate increases by the largest OSPs during the respective benchmark periods. As a result, no OSP would remain unduly restricted by a benchmark which might no longer accurately reflect the costs of providing OSP services. This concern has been echoed by other commenters in this proceeding, and TRA believes this issue deserves continued consideration by the Commission.

## **II.**

### **ARGUMENT**

#### **A. Establishment of OSP Rate Benchmarks Is In The Public Interest.**

TRA continues to support the establishment of benchmarks for OSP rates and charges as a means of both increasing overall consumer awareness of OSP service choices and

strengthening consumers' ability to effectively exercise those choices. The comments demonstrate widespread support for the Commission's goal of providing consumers sufficient information regarding OSP rates and charges to facilitate the making of informed telecommunications services decisions. Such commenters include numerous State regulatory authorities and the National Association of Attorneys General.<sup>3</sup> In various forms, a federally-established benchmark has been endorsed by LEC commenters as well.<sup>4</sup> Indeed, even Sprint, one of the Big 3, comments that, "it is reasonable to set the benchmark rate, as the Commission has tentatively proposed, at 115% of the weighted average operator service charges imposed by Sprint, AT&T and MCI."<sup>5</sup>

Like several commenters who, along with the Commission, have recognized that smaller OSPs may "incur significantly high costs due to their smaller volume of customers",<sup>6</sup> TRA remains apprehensive concerning the precise level at which the benchmarks should be set. TRA thus agrees with the Illinois Public Telecommunications Association which posits that "15%

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<sup>3</sup> See generally, Comments of the California Public Utilities Commission, the Florida Public Service Commission, the New York State Department of Public Service, the Public Utilities Commission of Ohio, and the National Association of Attorneys General Telecommunications Subcommittee.

<sup>4</sup> See Comments of Ameritech, at 5 ("Ameritech supports the Commission's tentative conclusion to use the three largest IXC's as a benchmark for the rates charged by specialized carriers at aggregator locations."); Comments of GTE Service Corporation ("GTE"), at iii ("GTE strongly urges the Commission to establish benchmarks for consumer rates based on . . . 120% of the highest rate of the three largest IXC"); Comments of U S West, Inc. ("U S West"), at iii ("U S WEST supports the benchmark pricing model originally proposed by CompTel . . . [s]hould the Commission reject that model, we support a benchmark price/rate proposal of the average of the Big Three IXC's' prices + 15%."); Comments of Pacific Telesis Group ("PacTel"), at 2 ("We support the Commission's proposal for a benchmark based on the weighted average of the rates for MCI, AT&T, and Sprint. We believe the benchmark should be based on some percentage of that average (probably 110% or 115%).).

<sup>5</sup> Comments of Sprint Corporation ("Sprint"), at 5.

<sup>6</sup> Comments of GTE, at 5-6.

above the existing rates may be insufficient to account for the costs incurred by small OSPs which AT&T, MCI and Sprint do not incur."<sup>7</sup> Characterizing a 15% margin as "unduly prejudicial to the small carriers, IPTA argues that "[t]here is still a need to allow smaller carriers to charge rates which are higher than the average of the three largest carriers. Small operator service providers do not have the same economies of scale in providing their services. . . . historically faced excessive billing and collection costs by local exchange carriers. Billing and collection rates charged by local exchange carriers to a small OSP may be 100% to 200% more than the rates charged by a LEC to AT&T, MCI or Sprint."<sup>8</sup>

It is imperative, then, that an adequate cushion be incorporated into the benchmarks to ensure that all OSPs will retain sufficient flexibility to meet the particular market constraints facing them. The New York State Department of Public Service has suggested, as an alternative to the Commission's "weighted average" plus a certain percentage method to determining applicable benchmarks, using the highest of the Big 3 OSP rates plus that certain percentage.<sup>9</sup> To the extent this approach would reasonably enhance OSPs' flexibility, TRA would not be opposed to the use of such an alternative. Other possibilities for determining the precise benchmark levels might include the approach originally proposed by Ameritech, *i.e.*, setting benchmark levels at 120 percent of the highest of the largest carriers rates, or simply increasing the proposed 15% margin to accommodate pricing flexibility concerns as necessary.

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<sup>7</sup> Comments of Illinois Public Telecommunications Association ("IPTA"), at 9.

<sup>8</sup> Comments of IPTA, at 10.

<sup>9</sup> Comments of the New York State Department of Public Service ("NYDPS"), at 2.



In light of the unique pricing difficulties facing many smaller OSPs, TRA strongly urges the Commission to clarify that OSP benchmarks will not constitute impassable rate "ceilings" -- a suggestion urged by certain parties, primarily state commenters, obviously and understandably motivated by a desire to strengthen consumer protection measures to the utmost. While sharing the States' concern for increased consumer protection safeguards, TRA believes implementation of a strict OSP rate cap system may severely frustrate the ability of smaller OSPs to formulate an OSP rate structure capable of recovering their unique costs while still delivering OSP service at or below a benchmark "cap". Indeed, it has been suggested that "even the Ameritech proposal of 120 percent of the highest of the three largest carriers' rates is not sufficient as an additional margin to maintain the existing level of payphone service . . . the vast majority of providers would be forced to reduce payphone service if only at 15 to 20 percent margin above the top three carriers' rates were allowed by the Commission."<sup>10</sup>

In TRA's view, the greatest benefit to consumers will result not from the imposition of inflexible OSP rate "ceilings" which might ultimately decrease the competitive OSP alternatives available to those consumers, but rather, from the implementation of a benchmark system pursuant to which consumers will retain the ability to choose from among numerous OSP providers. The rights of consumers will be vigilantly protected by incorporating into that benchmark system a consumer notification announcement which succinctly alerts the consumer to each instance in which OSP rates may exceed established benchmarks.

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<sup>10</sup> Comments of Communications Central, Inc. ("CCI"), at 15.

**B. Consumer Notification Requirements Should Apply Only to OSP Rates in Excess of Established Benchmarks and Should Take the Form of a Warning Announcement Rather Than a Specific Rate.**

TRA again urges the Commission to limit the application of the proposed consumer notification requirements to only those OSP rates which exceed established benchmarks.<sup>11</sup> The vast majority of OSP calls will be carried at rates at or below the established benchmarks. Numerous parties have recognized the inappropriateness of interposing an unnecessary, and in many cases unjustified, delay in the processing of every OSP call placed by a consumer.<sup>12</sup> In their combined comments, Bell Atlantic, BellSouth and NYNEX note that "disclosure messages could add ten to twenty seconds to the holding time of an operator-assisted call."<sup>13</sup> Such a blanket notification requirement might also decrease the effectiveness of a consumer notification process overall. An infrequently heard message is more likely to make an impression upon a consumer, especially if every time the message is heard, the same warning is conveyed -- "this call may cost you more than federally established OSP rates".

In addition to limiting consumer notification to situations where rates exceeding established benchmarks may be charged, it is imperative to present consumer announcements in

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<sup>11</sup> TRA does not support, however, the exemption of the so-called "benchmark OSPs" proposed by AT&T. It is logical to assume that benchmarks approaching consumer expectations because they have been predicated in some manner upon Big 3 OSP rates should rarely be exceeded by those Big 3. And in those situations where Big 3 rates exceed established benchmarks, the equitable balance should clearly fall on the side of supporting consumer notification.

<sup>12</sup> Comments of Ameritech, at 3; Bell Atlantic, at 5; U S West, at 4; American Public Communications Council ("APCC"), at 3; NTCA, at 4; IPTA, at 6; GTE, at 7.

<sup>13</sup> Comments of Bell Atlantic, BellSouth and NYNEX, at 5. The carriers go on to suggest that "[d]elays of this magnitude could require OSPs to add capacity to their operator switches and transmission systems in order to handle call volumes at peak periods." *Id.*

a format which will capture the consumer's attention and clearly impart the essential warning embodied by TRA's proposed consumer notification message.<sup>14</sup> In its Comments, TRA expressed the view that the most effective presentation of OSP rate information would result from a consumer notification procedure which is brief enough to prevent the consumer from noticeably perceiving a prolonged call processing time but which nonetheless provides sufficient information from which the consumer may make a comparison between the rate that will be charged and a "reasonable" OSP rate. Based upon the assertions of various LEC commenters, the consumer warning notification proposed by TRA may indeed represent not only the most effective, but also the only notification option capable of immediate implementation.

The technical difficulties and financial outlays associated with the provision of a "real-time" rate announcement for every call exceeding an established benchmark include assertions that "many LECs do not possess the technology for real time rating of 0+ calls. Considerable cost would be incurred for such development and deployment."<sup>15</sup> GTE states that while "[m]echanized equipment could possibly be enhanced to quote rates prior to the call connection . . . this would likely require significant capital outlays and would involve several years lead time to accomplish" and would "most likely require a complete replacement" of the carrier's current mechanized equipment.<sup>16</sup> Further, operator handled call completion time "would

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<sup>14</sup> A similar consumer warning message has also been suggested by The Office of the Ohio Consumers' Council. *See* OCC Comments, at 5.

<sup>15</sup> Comments of Southwestern Bell, at 3.

<sup>16</sup> To place the potential replacement cost in perspective, GTE references the 1993 cost of its current mechanized equipment -- approximately \$22 million. Comments of GTE, at 7.

likely double, increasing the operator surcharge per call accordingly".<sup>17</sup> MCI adds that "while it may be possible to develop an automated system that can quote a rate at the point the call is made, this nevertheless will significantly increase the OSP's cost." However, since "[a]ll calls may have to be sent to a live operator, in the near term, in order to disclose the rates for a call", immediate OSP costs may rise by "an additional \$0.40 per call".<sup>18</sup> And U S West believes "mechaniz[ing] a system that would allow for a data base dip for every 0+/- call would add about \$.50 to each call."<sup>19</sup> These implementation costs would, of necessity, be passed through to consumers utilizing OSP services.

The logistical and economic constraints discussed above lend significant support to TRA's proposal for a rate announcement linked not to a solitary dollar amount, but rather to the benchmark itself. Such an announcement could be implemented on an automated basis and would not necessitate the increased trunk requirements predicted by certain commenters. Such a benchmark-oriented announcement would, however, quickly alert the consumer to both the existence of the OSP benchmark and to the fact that the OSP may be charging rates up to a specified percentage in excess of that benchmark level, accomplishing the primary goal of both the Commission and industry commenters -- a quick and useful OSP rate comparison which would effectively promote informed consumer decisionmaking.

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<sup>17</sup> Comments of GTE, at 7.

<sup>18</sup> Comments of MCI, at 3-4. *See also*, Comments of Sprint, at 3, fnnt.3 ("labor costs of the rate disclosure would approximate \$.35 cents per call."); U S West, at iii ("Automated disclosures are the most cost effective and market efficient way to deliver meaningful price/rate information.").

<sup>19</sup> Comments of U S West, at 10. [footnote omitted]

**C. Benchmarks Should be Periodically Adjusted**

TRA joins those commenters who have urged the Commission to establish a procedure for periodically revising the benchmarks to adjust for rate increases by the largest OSPs in order to ensure that other OSPs will not be burdened with compliance obligations tied to outdated OSP rate data. NAAG, for example, comments that "[i]f the Commission decides upon a benchmark approach, there should certainly be periodic adjustment."<sup>20</sup> Sprint proposes that "the benchmarks should be revised quarterly, rather than annually as proposed in ¶25, with a much shorter lag than the proposed six months between the date on which rates are based and the date on which they begin to apply."<sup>21</sup> A quarterly benchmark revision schedule would substantially alleviate TRA's concern that a 12-month effectiveness period might subject OSPs to an artificially elevated "notification" burden predicated upon costs of providing OSP service which are no longer accurate. In order that administrative inconvenience might be minimized, however, TRA suggests that the benchmark revision process be undertaken no more frequently than on a quarterly basis. Should the Commission adopt a quarterly benchmark revision procedure, TRA further support PacTel's suggestion that the lag period between announcement and effectiveness of the benchmarks be limited to a 30-day period.<sup>22</sup>

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<sup>20</sup> Comments of NAAG, at 8.

<sup>21</sup> Comments of Sprint, at 6.

<sup>22</sup> Comments of PacTel, at 4. TRA continues to support the Commission's tentative conclusion, also supported by PacTel, that upward adjustment of OSP rates may be adjusted upward to meet Big 3 rate increases.

### III.

#### CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission, consistent with the foregoing, to establish benchmarks for OSP rates which are consistent with, and based upon, consumer expectations for OSP service rates, to tailor a consumer notification process for OSPs providing service in excess of benchmark levels which will provide a true basis for comparison and enhance consumer decision-making ability and to adopt procedures for adjusting annual OSP benchmarks to meet necessary OSP rate increases.

Respectfully submitted,

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